



**STATEMENT OF COLLEEN M. KELLEY  
NATIONAL PRESIDENT  
NATIONAL TREASURY EMPLOYEES UNION**

**ON**

**FEDERAL FAMILY HEALTH  
INFORMATION TECHNOLOGY ACT**

**SUBMITTED TO**

**SUBCOMMITTEE ON THE FEDERAL WORKFORCE  
COMMITTEE ON GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES  
JUNE 13, 2006**

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Chairman Porter, Ranking Member Davis, and members of the House Subcommittee on the Federal Workforce and Agency Organization, my name is Colleen M. Kelley and I am National President of the National Treasury Employees Union (NTEU). I am always grateful to come before this subcommittee and to have the opportunity to present this testimony today on behalf of the members of NTEU.

Federal employees and retirees are highly concerned about the quality and cost of the health insurance they receive through the Federal Employees Health Benefit Program (FEHPB). NTEU has been involved in several initiatives towards that end, including legislation to control costs for employees and retirees by increasing the employer contribution to FEHBP premiums.

At a time when federal pay rates lag significantly behind the private sector, attempts are being made to reduce employee rights in several departments and workers are subjected to ham-fisted schemes to contract out government work, health insurance becomes one of the most attractive features to recruit and retain the best employees. A decline in quality or an increase in cost of health insurance may be the last straw for a productive employee or applicant.

FEHBP must be kept modern, efficient, and well-functioning. It must embrace what is best in emerging technology so to better serve its beneficiaries. The Federal

Family Health Information Technology Act (HR 4859), properly implemented, can serve that goal. It has the potential to improve the quality of medical care, reduce errors and over time, control costs. HR 4859 would require Federal Employee Health Benefit Program (FEHBP) carriers to create electronic health records available to individual enrollees. These records have the potential of providing important benefits to beneficiaries. It will assist with better coordination of medical records, allow easier access to these records and, I believe, will save lives. FEHBP offers participants one of the widest varieties of providers of any health insurance system in the nation. The result is that participants can and often do move from plan to plan for reasons of cost, preference, relocation or other factors. With every change, there is a chance of an incomplete transfer of records.

Moreover, at some point in many peoples' lives, they have a period of extended sickness that may include multiple conditions, the use of different specialists and various medicines. Further, there may be difficulties in communicating their health situation and status to their attending doctor. This presents difficulties to the treating physician as well as the potential for improper treatment. The same is true in emergency room situations where patients can arrive unaccompanied and unconscious. By addressing this situation, electronic medical records can provide an important service to avoid some of the problems of such a situation.

Even for healthy persons, sudden tragedies like Hurricane Katrina can result in the loss of paper medical records and the removal of individuals from their family doctor and regular hospital as well as their own personal records. The bottom line is that no one benefits from medical records and important health information being kept on paper records, uncentralized and inaccessible when needed.

NTEU understands the important and worthy goals and objectives of this legislation. Having said that, I would like to outline some concerns and improvements we feel would be beneficial to this legislation.

## **PRIVACY**

One of the most serious issues that must be considered with regard to this legislation is privacy. From my own discussions with NTEU members, I can tell you privacy is a significant concern. The development of privacy standards are essential prior to the implementation of this legislation. I cannot say that NTEU is entirely confident that this legislation in its current form fully protects participant privacy.

An “opt-in” provision helps to make sure that those FEHBP participants who have privacy concerns are not forced into participating in a program they are not comfortable with. I agree with former House Speaker Newt Gingrich who testified before this subcommittee recently that it can be expected that substantial numbers of FEHBP enrollees would elect to opt-in. At the same time, the rights of those who feel differently are protected and they maintain the option to opt in at a future time.

The recent situation at the VA shows that the status quo is not working. In order to ensure proper privacy standards, the Office of Personnel Management (OPM) and the Department of Health and Human Services (HHS) must, in a formal way, engage in on-going consultations with federal employee and retiree representatives. This legislation should require HHS’s Office of the National Coordinator for Health IT (ONC) to meet periodically with federal employee and retiree organizations, to consult with them, to provide them with all information needed to make a thoughtful review of these matters including the number and nature of all privacy complaints made by FEHBP participants towards carriers, and to give great weight to any recommendations made by these organizations. The chief privacy officer at both OPM and HHS should interact with these organizations. Currently, the agency privacy officers are not full time positions but simply duties added to an existing position. At HHS and OPM, these should be made full time positions where the officer’s exclusive duties are protecting privacy rights. These positions also need their authority enhanced. The privacy officer should have the authority to undertake investigations and issue reports that are deemed

necessary by the privacy officer as well as subpoena power. Further, in order to insure the independence and integrity of the privacy officer, any removal or transfer should require notification to both houses of Congress.

A full review of the Health Information Portability and Accountability Act (HIPAA) is needed to ensure that the privacy protections it mandates are applicable and adequate to provide protection to FEHBP enrollees under the proposed system. In addition to other privacy concerns, federal employees need to be protected from their employer having any access to their personal medical records.

In addition to proper standards, there needs to be the will to enforce whatever standards are developed. Mr. Chairman, I was very disturbed by recent news reports that the Department of Health and Human Services was not rigorously enforcing existing privacy standards. The degree of complacency in guarding privacy directly relates to the willingness of HHS to enforce law and regulation. Warnings, wrist-slaps and fines of as little as \$100 to wrongdoers is not enough. Enforcing agencies need to take seriously their duties and not be afraid to punish those who violate privacy protections. Strict enforcement and firm punishment will result in proper compliance. FEHBP enrollees must have recourse to remedies when their privacy rights are violated.

I believe it is also important that ONC and OPM both report back on a regular basis to this subcommittee as well and that the subcommittee perform proper oversight of FEHBP privacy issues. That way, there will be on-going congressional review and any laxness or shortcomings either in enforcement or legislative authority can be resolved.

### **ACCESS**

Improved access by enrollees to their personal medical records is an important feature of this legislation. Electronic, web-based access is the means which most FEHBP enrollees will utilize. However, some enrollees, particularly retired federal workers and

their survivors, do not have access to a web-based portal or do not have the computer skills needed. Provisions need to be made so that they have the opportunity to access their medical records as well.

## **COSTS**

Passage of this legislation will put the nation's largest employee health benefits program behind the development of medical IT. This will not only promote medical IT with FEHBP carriers but will have a society wide impact. FEHBP participation will give medical IT the critical mass it needs to work effectively. In the long run, both the federal and private sector should benefit. Therefore, it would be unfair for FEHBP participants to bear even a short term premium increase for what is a social benefit. I note that the bill prohibits increases in FEHBP premiums to pay for medical IT. NTEU commends you, Mr. Chairman, and Representative Clay for the inclusion of this important provision. This provision's strict enforcement will be the key issue. Given this legislation's potential benefit to all of society – private sector as well as the federal sector – it would seem proper and reasonable to NTEU that costs associated with short term development of medical IT in FEHBP be provided for by an appropriation from general revenue.

The legislation does establish a trust fund at the Office of Personnel Management to accept private contributions that can be used to encourage providers to implement provider-based electronic health care records. While NTEU would prefer simply a financing of the costs by appropriations, the trust fund, with proper safeguards, can also be a means of providing financing and preventing any FEHBP premium increases.

As introduced, this legislation did allow the unused portion of FEHBP's one percent administrative fee to be made available to fund the electronic health record system. NTEU and other organizations had reservations about this method of financing, as the unused portion of the administrative fees is deposited to the contingency reserve fund. Our concern was that paying for these costs from the administrative fee reduces the

amount available for the contingency fund and thereby, in the end, reduces that fund. You and your staff have been very open to listening to NTEU's concerns here. We understand it is your intention to remove this from this legislation, which NTEU deeply appreciates this.

Mr. Chairman, as always, I am honored to appear before this important subcommittee. Again, I commend you for taking the initiative on this matter. While I have outlined some concerns and proposed improvements to this legislation, I look forward to working with you on the development of electronic health records that protect privacy and promote health care efficiency. I would be happy to answer any questions that you or other members of the subcommittee may have. Thank you.